

PETERS, MOORE, & Co.

[To accompany H. R. No. bill 545.]

JULY 21, 1842.

Mr. OWSLEY, from the Committee on the Post Office and Post Roads,
made the following

REPORT :

*The Committee on the Post Office and Post Roads, to whom was referred
sundry claims of Peters, Moore, & Co., for mail transportation ser-
vice, &c., submit the following report :*

On the 27th day of October, 1835, Peters, Moore, & Co., entered into two several contracts with the Postmaster General to transport the mails from Philadelphia to Pittsburg, in the State of Pennsylvania. These contracts covered routes numbered 1,031, from Philadelphia to Chambersburg, 146 miles, and 1,058, from Chambersburg to Pittsburg, 155 miles.

By the former contract they were to receive \$3,750 per annum, and by the latter \$11,750.

Each contract was made in pursuance of a separate bid made by said Peters, Moore, & Co., to perform the service on each of said routes according to the advertisements of the Postmaster General. The service, under these contracts, was to commence on the 1st day of January, 1836, and to continue for four years.

It appears, that previous to entering into said contracts, the average weight of mail matter usually transported along said routes was from four to five hundred pounds daily. It also appears that, immediately, or within a very few days after Peters, Moore, & Co. entered upon the performance of their contracts, other mails, which had been previously carried on other and distinct routes, were, by order of the Postmaster General, placed in the care of Peters, Moore, & Co., to be transported upon route 1,031, from Philadelphia to Chambersburg, and thence to Bedford, fifty-five miles, on route 1,058, and thence to Washington, in Pennsylvania.

That the weight of mails was thereby increased from four hundred or five hundred pounds, to about two thousand pounds, for three or four days in each week, and occasionally, from two thousand five hundred to two thousand eight hundred pounds on the outward trip ; and on the other days of the week, the aggregate weight, on the outward trip, was about one thousand two hundred pounds.

It also appears, that said Peters, Moore, & Co., continued to transport the whole of the mails thus given to them, from about the 1st January, 1836, to 1st July, 1837, a period of about eighteen months, on their route

from Philadelphia to Chambersburg, and thence to Bedford, on the route to Pittsburg.

On the 1st July, 1837, the said unusual mails, of which Peters, Moore, & Co. complained, were taken from their routes by order of the Postmaster General, and were transported from Philadelphia to Baltimore, and thence, via Frederick and Washington, to Wheeling, in Virginia, on the routes over which said mails had, previously to January, 1836, been carried. These mails, so complained of by Peters, Moore, & Co., where those which arrived at Philadelphia from the eastward, destined for Wheeling.

It appears that, at the letting of mail contracts in October, 1835, Stockton & Stokes took the contracts for transporting the mails from Baltimore to Wheeling, for the compensation of \$23,312 per annum. They understood, and so intimated in their bids, that the Northern and Eastern mail matter, arriving at Philadelphia and destined for Wheeling, was not to be continued on to Baltimore, and then, as it had previously been, be thrown upon their routes to Wheeling. It appears that Peters, Moore, & Co. always complained of this additional mail matter, and insisted that they never intended to contract for carrying it. These complaints were made to the postmaster, with applications for additional compensation, who as firmly insisted that they were bound to carry this mail matter, and refused any additional allowance.

In the summer, however, of 1837, the Postmaster General entered into new contracts with Stockton & Stokes, for the transportation of the mails from Baltimore to Wheeling, in this heavy mail matter, by which he agreed to pay them the sum of \$63,800 per annum, being \$40,488 per annum more than they were to receive by the contracts of October, 1835.

The petitioners now claim to be paid for carrying these heavy mails for eighteen months, at the rate of \$40,488 per annum, amounting to \$60,732, upon the principle that the Postmaster General agreed to pay Stockton & Stokes this amount for carrying said mail matter from Baltimore to Wheeling.

The important inquiry in this case, in the opinion of the committee, is, did Peters, Moore, & Co., contract to carry this additional mail matter, or the mail matter of which they complain?

The committee are unwilling to establish the principle of affording a relief to contractors, upon the ground merely that the contract is a bad one, where the contract has been fairly and understandingly made; where there has been no fraud or concealment; or where, from the facts known to the contractor, or disclosed to him at the time of making the contract, he would not, as a man of ordinary prudence and sagacity, be likely to be deceived.

The committee are clearly of opinion that, in a case where the Postmaster General requires additional services from a contractor, by placing upon his route heavy mails which had previously been carried on other routes, and the carrying of which was not in the contemplation of the parties at the time of making the contract, the contractor is entitled to a fair and reasonable compensation for the additional service. Although it is understood that, in the advertisements published by the Postmaster General for bids for carrying the mails, neither the amount of the mail matter nor the particular mails are specified, when the contractor bids he may reasonably be supposed to predicate his bid upon the knowledge he has of the amount of mail matter which has usually been carried upon the

particular route, including always the natural and probable increase of the mails during the period his contract is to run.

In the present case the petitioners insist that, when they entered into their contract with the Postmaster General, they only contemplated the carrying of the mail matter which had, immediately previous to that time, been carried upon those routes, including the natural increase of the mails during the life of the contract.

Mr. Peters, who it is understood made the bids for the firm, has appended his affidavit to their memorial to the Postmaster General, containing in substance these allegations.

This view of the case is resisted by the Postmaster General, who insists, among other things, that the Department had contracted *for certain means of transportation* amply sufficient to perform the service required, and that no other mails were thrown on the contractors than those intended when the advertisement was issued and the contract made.

The committee have examined the advertisements, published in 1835 by the Postmaster General, for bids on these and several other routes. The advertisement for route 1,031, from Philadelphia to Chambersburg, 145 miles, requires the mail to be carried "in railroad cars and four-horse coaches, the coaches to be limited to three outside passengers on the outward trip, and mail to be attended by a guard in the railroad cars, to be provided at the expense of the contractor. Offices off the railroad to be supplied by hand or otherwise according to distance."

The advertisement for route 1,058, from Chambersburg to Pittsburg, also route 1,115, from Bedford to Washington, Pennsylvania, contains a similar limitation as to passengers on the outward trip. The advertisement published at the same time for routes 1,373, from Baltimore to Frederick, 45 miles, and 1,391, from Frederick to Cumberland, 91 miles, and 1,418, from Cumberland to Wheeling, 131 miles, contains, also, the same limitations as to passengers on the outward trip, confined, however, to the time "during the session of Congress."

It appears that proposals were received for carrying the mails on these routes from several bidders, bearing date the 14th and 15th October, 1835, the 15th being the last day upon which proposals or bids could be received; that the contractors (Stockton & Stokes and others, including Peters) were on those days in the city of Washington, where their bids seem to have been made out. On the 15th October Stockton & Stokes put in bids for routes, 1,373, from Baltimore to Frederick; 1,391, from Frederick to Cumberland; and 1,418, from Cumberland to Wheeling, proposing to carry the mail on these routes for the aggregate sum of \$46,624—saying, in their bids, that the amount was based upon the necessity of their continuing to run two daily lines with the mails, as at present, "which, of course, we engage to do."

On the same day they (Stockton & Stokes) put in further bids, proposing to carry the mails on these same routes for sums amounting, in the aggregate, to \$23,312, one-half of the amount of their former bids. They assign, as a reason for their second bids, that, in their high bids, they calculated that it would take (as it then took) two lines daily to perform the service. They add: "Presuming, however, that routes Nos. 1,058 and 1,115 are intended, by the advertisements, to carry the Northern and Eastern matter, (now coming via Baltimore, and thence West by our

lines,) we could, in that event, perform the service for the above amount." Their low bids were accepted.

On the same day (15th October) it appears that J. N. C. Stockton put in a proposal for carrying the mail on route No. 1,031, from Philadelphia to Chambersburg, as advertised, for \$13,500; and that J. M. Stockton proposed to carry the mails on route No. 1,058, from Chambersburg to Pittsburg, as advertised, for the annual compensation of \$45,000. It also appears that Jesse Tomlinson and others, his associates or partners, proposed to carry the mails on route No. 1,031, from Philadelphia to Chambersburg, as per advertisement, for the yearly compensation of \$14,990; also, on route No. 1,058, from Chambersburg to Pittsburg, for the yearly compensation of \$36,000. They also offered to carry the mails on route No. 1,031, with the "privilege" of carrying passengers, for \$8,000. It seems, also, that they offered to carry the mails on route No. 1,058 in thirty-six hours, (the time per advertisement is thirty-three hours,) for \$9,000; and another offer to carry, without restriction of passengers, for \$3,000.

The bids of Peters, Moore & Co. were to carry the mails on routes Nos. 1,031 and 1,058 "agreeable to advertisement," on the former route for \$3,750, and on the latter for \$11,750; and these were the lowest bids on these routes to carry the mails according to the advertisement.

The committee are struck with much surprise at the astonishing difference in the proposals for carrying the mails on the said routes, (Nos. 1,031 and 1,058.) It would seem that Stockton & Stokes and J. Tomlinson & Co. understood, from the advertisement limiting the coach to three outside passengers on the outward trips, that it was the intention of the Postmaster General to place upon these routes the heavy mail matter arriving at Philadelphia from the North and East on its way to Wheeling.

It appears that Peters, Moore, & Co. put in proposals for carrying the mails on route 1,115, from Bedford to Washington, for \$16,000, agreeable to advertisement. Proposals were made for this route by several others. The bid of D. B. McNair & Co. was as follows: "We propose to carry the United States mails on route No. 1,115, from Bedford to Washington, 106 miles and back daily, in four-horse post coaches, agreeable to advertisement, for the yearly compensation of \$25,000; or we will carry the same mails, (No. 1,115,) with the privilege of carrying passengers, for the yearly compensation of \$8,500."

The Postmaster General states, in his reply to the application of the petitioners for additional compensation, that, "after the acceptances (of the bids) were made, the first assistant was directed to read out to the assembled contractors the accepted bids, and state the reason noted in the book why, in some cases, the lowest bids were not accepted. On the route from Chambersburg to Pittsburg, he announced the following bids, viz:

Peters, Moore, & Co., \$11,750, or \$12,000, including special routes.

J. Tomlinson & Co., \$9,000, in thirty six hours.

J. Tomlinson & Co., \$3,000, with privilege of passengers.

"The bid of Peters, Moore, & Co. was accepted, and the reasons why those of J. Tomlinson & Co. were not accepted, having been noted in the book, were read aloud in the following words, viz: 'Tomlinson & Co. require more time in their first proposal than is allowed in the advertisement; and in their second bid they propose to remove the restriction as

to passengers: so that Peters, Moore, & Co. make the lowest offer conforming to the advertisement.' "

It does not appear whether Peters was present or not on this occasion.

Under the facts disclosed in the case, the committee are unwilling to recommend the payment or allowance of any additional compensation.

Another item in the account or claims of Peters, Moore, & Co. is for carrying the mails on the turnpike between Philadelphia and Lancaster, in two-horse wagons, from the 1st of January, 1836, to the 1st of February, 1837, and supplying the offices on the turnpike. The facts appear to be, that, in the contract before mentioned for carrying the mails on route 1,031, from Philadelphia to Chambersburg, there is a stipulation that the contractors should supply these offices on the turnpike, by "hand or otherwise," from the railroad. Only one of these offices is situated on the railroad; most of them are at considerable distance from it, and it seemed impracticable to supply them from the railroad without great and unreasonable delay to the cars employed in transporting the mails.

The fact of its being thus impracticable seems to have escaped the attention of both parties at the time of making the contract. It appears, further, that an agent of the Post Office Department (Mr. Plitt) being satisfied that the offices could not be supplied from the railroad, directed them to be supplied from the turnpike by a two-horse wagon.

This agent communicated to the Department the difficulties, and the Department offered to Peters, Moore, & Co. \$2,000 per annum to supply these offices, by wagon, on the turnpike. This offer was predicated upon a calculation of what it would have cost the claimants to supply these offices from the railroad, and the cost of supplying them by wagon in the manner proposed, the difference of the two modes, as calculated at the Department, being \$2,000. This offer was declined by Peters, Moore, & Co. The committee are of the opinion that, under the circumstances of the case, the claimants are entitled to compensation for this service.

They have charged \$3,400 per annum, amounting, for the thirteen months, to \$3,683, and which they allege is only the amount it cost them to perform the service. It appears that the Postmaster General made a contract, which commenced February 1, 1837, for this same service, by which he agreed to pay \$2,900 per annum, at which rate, for thirteen months, the amount would be \$3,141 66. The committee are of opinion that the claimants should be allowed the amount offered by the Postmaster General, (\$2,000 per annum,) amounting to \$2,166 66.

A further item in the account of the claimants is for transporting the mails on the turnpike from Philadelphia to Lancaster in the winter of 1836, when the railroad was entirely obstructed by a heavy fall of snow. It appears that the claimants had contracted to carry the mails on the railroad. In the winter of 1836 the railroad was obstructed by snow for a period of about forty days, as stated by Mr. Plitt, an agent of the Post Office Department, during which time the claimants were obliged to put teams on the road and carry the mails at great expense.

The charge of the claimants for this service is \$4,060, which they say is the difference between the service thus performed and the railroad service. The Postmaster General, in answer to this claim, maintained that the claimants, who had agreed to carry the mail on the railroad, were to run all risks, &c. It is stated in a certificate of William J. Steele, an agent of the claimants, that, to the best of his knowledge, twenty-two

teams were employed for forty-three days, and twenty-three teams for four days.

This certificate is not sworn to by Mr. Steele, but there is appended to it a certificate of the Hon. George McCulloh, of the credibility of said Steele. No doubt is entertained by the committee of the credibility and respectability of the witness. It seems, however, to be a loose, if not dangerous practice, in a case of such magnitude, to act on such testimony. It is worthy of remark, that the claimants in this item, for carrying the mail from Philadelphia to Lancaster (only a part of route No. 1,031) for a period of about forty days, during which the railroad was obstructed by snow, charge a larger sum than by contract they were to perform the whole service on that route for the entire year. Conceding that the claimants may be supposed to have entered into this contract with reference to the state of things which had formerly existed, and which might from experience reasonably be expected, and still the committee are of opinion the claimants are not entitled to the compensation claimed for this service. The contract is not shown to have been drawn different from the agreement between the parties, either through fraud or mistake, and under such circumstances ought not to be enlarged or diminished in its terms. If the principle be established, that the claimants are entitled to extra compensation because the railroad was obstructed by snow, during the winter 1836, for a longer time than usual, or than they reasonably had a right to expect when they made the contract, it would seem to be equally just to allow the Postmaster General to claim an abatement from the amount agreed to be paid; provided there had been no snow during that winter, or less obstruction than was anticipated by the parties at the date of the contract—a principle which it is believed few contractors would be willing to admit, and if admitted, would lead to great difficulty and embarrassment in all such cases.

The fourth item in the claim of the petitioners is for \$840, which it appears the Postmaster General retained out of their pay, upon the ground that it was received by them for carrying more passengers in their coaches than by their contract they were permitted to carry.

If, at any time, the contractors failed to deliver the mails at the time specified in the contract, the Department had the undoubted right to punish the neglect by imposing a fine; and this course, it is believed, was observed by the Department with sufficient rigour. To fine for delays, and withhold the passenger money, would inflict a double punishment. The committee think the \$840 should be paid over to the claimants.

The petitioners also claim the sum of \$4,670 which they allege was retained by the Department for fines imposed for failures to arrive within schedule time, when the connexion between the routes were not broken.

The contract time for the departure, on route No. 1,122 from Pittsburg, was 6 o'clock P. M., but the petitioners allege that 4 o'clock A. M. was the *actual* time of departure on that route. No order or other evidence has been produced, in the opinion of the committee, authorizing or requiring such changes from that stipulated in the contract. The petitioners have exhibited to the committee a letter from Mr. John Bigler, (who is or was in some way connected with the post office at Pittsburg,) who says, "that, during the year 1839, the Erie mail left that office at 4 o'clock A. M.; that he is told by the principal mailing clerk that it left there at the same hour during the *greater part* of the years 1837 and 1838; that a

part of the time it left at 6 o'clock in the evening." The petitioners also rely on the registers to prove the change. The answers from the Department, and the letter of Mr. Suter, show that no order authorizing such change can be found. Mr. Suter, in his letter, says "the weekly register of arrivals and departures from the Pittsburg office states the time of departure from Pittsburg office to be 6 o'clock P. M., and not 4 o'clock A. M.

The committee cannot admit the right or power of the contractors or the postmaster at Pittsburg to change the contract time, without written or express authority from the Department. A mere verbal arrangement (if any such existed which is not shown) would be inferior in its nature to the written contract, and ought not, according to a correct application of legal principles, be permitted to change or alter the terms of the written contract. This item in the account does not seem to have been mentioned or embraced either in the memorial, resolution, or former reports.

The committee deem it unnecessary to speak of the importance of a punctual compliance with the terms of this kind at so important a point.

Although the fines in this instance appear large, yet, if they had been imposed according to the maximum authorized by law, they would have been much larger. Under all the circumstances, the committee think this item should not be allowed.

The petitioners have charged interest upon the several items contained in their account. The committee apprehend that these claims are comprehended within that class of claims upon which Congress has declined, and continues to decline, the payment of interest; they, therefore, have not allowed interest upon any of the items.

The committee ask leave herewith to submit a bill for the relief of Peters, Moore, & Co., in accordance with the views of this report.

